

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1482 RE
)	
MONSHARELL LARICE HALL, ¹ and)	
MLH REALTY AND PROPERTY)	
MANAGEMENT, LLC,)	
)	
Respondents.)	

DECISION

MonSharell Larice Hall's real estate broker associate license is subject to discipline. The real estate association license of MLH Realty and Property Management, LLC, ("MLH Realty") is subject to discipline.

Procedure

On August 16, 2013, the Missouri Real Estate Commission ("MREC") filed a complaint alleging there is cause to discipline Hall and MLH Realty. On September 23, 2013, Hall filed an answer. No attorney entered an appearance on behalf of MLH Realty; thus, it did not file an answer to the complaint. On March 27, 2014, we held a hearing. Assistant Attorney General Edwin Frownfelter represented the MREC. Hall represented herself, but MLH Realty was not

¹ Also referred to in the record as Marsha Hall.

represented by counsel at the hearing. The matter became ready for our decision on July 22, 2014, the date the last written argument was due.

Findings of Fact

1. Hall holds a Missouri real estate broker associate license issued by the MREC. The original date of issue was November 6, 2008. The license expired June 30, 2012, was not renewed, and is currently in canceled status.

2. MLH Realty and Property Management, LLC (“MLH”), is a Missouri limited liability company whose registered agent and designated broker is Hall, and whose address registered with the MREC is 7447 Holmes Road, Kansas City, Missouri. MLH holds a real estate association license from the MREC that was originally issued January 20, 2010. The license expired June 30, 2012. It was not renewed, and is currently in closed/out of business status.

Count I – Closed Business

3. Prior to December 2011, Hall maintained a property management business under the name of MLH.

4. In December 2011 and January 2012, Hall closed her property management business and shut down MLH. On February 2, 2012, Hall filed a Closing of a Real Estate Brokerage affidavit with the MREC to close MLH Realty, stating that business activity ceased on January 6, 2012.

5. During her property management business, Hall developed a practice of posting financial statements on her Web site rather than sending clients copies of the statements.

6. When Hall closed her business, she also closed down her Web site, leaving clients without access to their financial statements. Hall did not mail the statements or otherwise provide access for clients to financial information they lost when she closed her Web site.

Count II – Escrow Account

7. Hall and MLH Realty maintained an account at Bank of America as a property management escrow account (“the escrow account”). Although they had other accounts at that bank, this was the only escrow account.

8. As of December 31, 2011, Hall and MLH Realty held funds on behalf of several clients, including: approximately \$3,500 held on behalf of William Bass, an undetermined amount held on behalf of Bruce Cohen and Nicole Kerrick, approximately \$1,830 held on behalf of Barbara Magallon, and approximately \$3,862 held on behalf of Llewellyn Holdings.

9. The statement ending balance on Hall’s escrow account for the statement period ending December 31, 2011, was a deficit of \$124.51.

10. During the statement period from January 1, 2012, until January 31, 2012, Hall made deposits in the total amount of \$11,907.00 and withdrawals and debits in the amount of \$12,394.89, further reducing the statement ending balance to a deficit of \$612.40.

11. Hall failed to keep intact funds held on behalf of clients in the escrow account.

Count III – Bristol Terrace Property

12. On February 8, 2011, William Bass entered into a property management agreement with Hall and MLH Realty to manage a property he owned, located at 10916 Bristol Terrace, Kansas City.

13. On July 1, 2011, the Bristol Terrace house was leased to Sheila Redick at a rent of \$750 per month.

14. Redick paid Hall and MLH Realty one year’s rent in advance (\$9,000) and paid a rental deposit of \$500.

15. Hall stated to Bass that Redick only paid two months in advance. Bass received those two payments. Hall delivered three more rental payments to Bass while she was managing the property.

16. Late in 2011, Redick attempted to contact Hall about maintenance issues. Hall's telephone numbers were disconnected and Redick was unable to reach her. Redick telephoned Bass about the issues. When Bass asked Redick about the December rent, Redick informed him she had paid for the year in advance. Redick showed Bass copies of the \$9,000 cashier's check she had delivered to Hall and a receipt from Hall.

17. Although she told Redick that she was no longer managing the property, Hall never notified Bass of this.

18. On January 9, 2012, Bass sent Hall an e-mail requesting that she deliver to him the balance of rent on the year paid in advance. Bass received three more rent payments from Hall after this.

19. An unpaid balance of approximately \$3,000 (rent and the security deposit) remains on Hall's account with Bass.

20. As of December 31, 2012, and January 31, 2012, Hall's escrow account at Bank of America was overdrawn, although Hall should still have been holding approximately \$3,000 on behalf of Bass. Hall failed to hold Bass' funds separate and intact, and had converted them to her own use and benefit.

Count IV – Olive And Bales Properties

21. In July 2010, Bruce Cohen and Nicole Kerrick entered into a property management agreement with Hall and MLH Realty to manage two residential rental properties in Kansas City, located at 4019 Olive and 2930 Bales.

22. Under the property management agreement, Hall and MLH Realty charged Cohen and Kerrick \$600 as a leasing commission, \$150 as a setup fee, and a fee² per month.

23. The Bales property was rented and occupied.

² The complaint states that the monthly fee was \$199, but there is no evidence of the amount.

24. In May 2011, the Olive property became vacant and was severely vandalized. It was not occupied after this.

25. Hall charged Cohen and Kerrick to board up the property and a management fee of \$50 per month while it was vacant, which Cohen and Kerrick paid.

26. Local vendors and neighborhood activists reported to Cohen and Kerrick numerous suspicious activities in the house, including lights and ceiling fans turned on and windows open during heavy rain. Hall denied to Cohen and Kerrick that there had been any break-ins.

27. Hall failed to deliver to Cohen and Kerrick any rent payments or accounting on the Bales property for October and November 2011.

28. On October 21, 2011, Hall sent Cohen and Kerrick a notice stating that she was terminating property management services.

29. Although Hall did not collect rent on the Bales property for October and November 2011, she took her management commissions for those months out of the maintenance reserve.

30. The tenants in the Bales property moved out in November 2011, leaving two months' rent unpaid.

31. The tenants informed Cohen and Kerrick that they had notified Hall they would be leaving months before they did so, but Hall never informed Cohen and Kerrick of this.

32. Cohen and Kerrick retained a new property manager in November 2011.

33. Hall failed to deliver to Cohen and Kerrick an accounting or disbursement of rents, maintenance reserve, or other funds held on behalf of Cohen and Kerrick.

34. Hall's escrow account at Bank of America was overdrawn, although Hall should still have been holding money on behalf of Cohen and Kerrick. Hall had failed to hold their funds separate and intact.

Count V – Chestnut Avenue and 12th Street Properties

35. Llewellyn Holdings, LLC, (“Llewellyn”) through its manager Leo Pope, entered into a property management agreement with Hall and MLH Realty to manage two properties located at 3740 Chestnut Avenue and 2318 North 12th Street, Kansas City, Missouri.

36. On January 12, 2012, Pope received a call from the tenant in the 12th Street property informing him that the tenant was experiencing a water leak and was unable to reach Hall.

37. Pope also attempted to reach Hall, and was unable to do so. By e-mail dated January 13, 2012, Pope notified Hall that he was terminating the property management agreement for the 12th Street property. In the e-mail, Pope demanded payment of \$250 in the maintenance reserve account, along with December 2011 and January 2012 rents. Hall did not respond to Pope’s e-mail.

38. On January 17, 2012, Pope received a letter from Hall dated January 6, 2012, stating that Hall and MLH Realty were withdrawing from all property management duties.

39. On January 17, 2012, Pope sent Hall an e-mail acknowledging the January 6 letter, and requesting that she forward copies of current leases, property deposits, portfolio minimum, outstanding balance from November and December 2011, and rents from January 2012. The total amount estimated was \$3,862.60.

40. Pope received no response from Hall to his e-mail.

41. On January 31, 2012, Pope sent Hall a letter reiterating the requests in his January 17 e-mail. He received no response to the letter.

42. On January 31, 2012, the date of Pope’s letter requesting payment of \$3,862.60, Hall’s escrow account at Bank of America was overdrawn by \$612.40, although Hall should still have been holding approximately \$3,862.60 on behalf of Llewellyn. Hall had failed to hold Llewellyn’s funds separate and intact, and had converted them to her own use and benefit.

Count VI – College Avenue Property

43. On February 22, 2011, Barbara Magallon, trustee for the Mulligan Family Trust, entered into a property management agreement with Hall and MLH Realty to manage a rental property at 3723 College Avenue, Kansas City, Missouri.

44. Hall received a maintenance reserve of \$250 and a tenant security deposit of \$500 on behalf of Magallon.

45. Hall collected rent in the amount of \$600 from the tenant for November and December 2011.

46. Hall posted owner statements on her Web site showing that the balances payable to Magallon were \$401.00 for November 2011 and \$399.07 for December 2011, but she failed to disburse those amounts to Magallon.

47. On November 28, 2011, Hall sent a letter to the Mulligan Family Trust, care of Magallon, stating that she was terminating property management services effective December 26, 2011.

48. After receiving the letter of November 28, 2011, Magallon telephoned Hall, who told her she would send Magallon the November and December rents along with the \$250 maintenance reserve and \$500 security deposit. Hall failed to do so.

49. As of December 31, 2011, Hall should have been holding approximately \$800 in rent, \$250 for the maintenance reserve, and \$500 for the security deposit on behalf of Magallon. However, as of December 31, 2011, Hall's escrow account at Bank of America was overdrawn by \$124.51. Hall had failed to hold Llewellyn's funds separate and intact, and had converted them to her own use and benefit.

Conclusions of Law

We have jurisdiction to hear this case.³ The MREC has the burden of proving that there is cause for discipline.⁴ A limited liability company, like a corporation, “is an artificial being, and as an entity it must act through an agent.”⁵ As MLH Realty’s designated broker, Hall was MLH Realty’s agent. Therefore, Hall’s actions on MLH’s behalf will determine whether both Hall’s and MLH Realty’s licenses are subject to discipline.

This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness.⁶ When there is a direct conflict in the testimony, we must make a choice between the conflicting testimony.⁷

Section 339.100 states:

2. The [MREC] may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all money belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

³ Section 621.045. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

⁴ *Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁵ *Sutherland v. Sutherland*, 348 S.W.3d 84, 92 (Mo. App., W.D. 2011) (quoting *Carter v. St. John’s Reg’l Med. Ctr.*, 88 S.W.3d 1, 9 (Mo. App., S.D. 2002) (internal quotation omitted)).

⁶ *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

⁷ *Id.*

(3) Failing within a reasonable time to account for or to remit any money, valuable documents or other property coming into his or her possession, which belongs to others;

(15) Violation of or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

Section 339.105 states:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

2. Each broker shall notify the [MREC] of his or her intent not to maintain an escrow account, or the name of the financial institution in which each escrow or trust account is maintained, the name and number of each such account, and shall file written authorization directed to each financial institution to allow the [MREC] or its authorized representative to examine each such account; such notification and authorization shall be submitted on forms provided therefor by the [MREC]. A broker shall notify the [MREC] within ten business days of any change of his or her intent to maintain an escrow account, the financial institution, account numbers, or change in account status.

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any

time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

Section 339.790⁸ states:

2. A real estate broker and an affiliated licensee owe no further duty or obligation after termination, expiration, completion or performance of the brokerage agreement, except the duties of:

(1) Accounting in a timely manner for all money and property related to, and received during, the relationship[.]

Regulation 20 CSR 2250-8.160(1)⁹ states:

Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the [MREC] and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

Regulation 20 CSR 2250-8.120 states:

(1) All money received by a licensee as set out in section 339.100.2(1), RSMo shall be deposited in the escrow or trust account maintained by the broker no later than ten (10) banking days following the last date on which the signatures or initials, or both, of all the parties to the contract are obtained, unless otherwise provided in the contract. Earnest money received prior to acceptance of a written contract may be deposited into the escrow account by the broker with the written authorization of the party(ies) providing the funds.

* * *

(4) Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have

⁸ RSMo 2000.

⁹ The complaint cites this regulation as 20 CSR 2250-8.060(1), but since the complaint also quotes the language from the regulation, we find the parties are on notice that it may be alleged as cause for discipline.

some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan

proceeds and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. Commissions payable must be removed from the escrow account at the time the transaction is completed

Regulation 20 CSR 2250-8.155 states:

(1) Voluntary Closing.

(A) A real estate brokerage shall be closed in the following manner. The individual broker or the designated broker shall—

* * *

3. Notify all current listing, buyer or tenant agreement, and management contract clients as well as parties and co-brokers to existing contracts, in writing, advising of the date the brokerage will close. All listing, buyer, tenant, and management clients must be advised in writing that they may enter into a new listing, buyer, tenant, or management agreement with the broker of their choice;

* * *

5. Maintain all escrow or trust accounts until all monies are transferred to a title company, an escrow company, or an attorney for closing of the transaction, or are otherwise properly disbursed as agreed to in writing by the parties having an interest in the funds[.]

Regulation 20 CSR 2250-8.160 states:

(1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the [MREC] and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

(2) Every broker shall retain for a period of at least three (3) years true copies of all property management agreements,

correspondence or other written authorization relating to each real estate transaction relating to leases, rentals or management activities the broker has handled. The broker must also retain all

business books, accounts and records unless these records are released to the owner(s) or transferred to another broker by written detailed receipt or transmittal letter agreed to in writing by all parties to the transaction.

Regulation 20 CSR 2250-8.220 states:

(1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

(2) All security deposits held by a broker shall be maintained, intact, in an escrow account other than the property management account(s), pursuant to section 339.105, RSMo, unless the owner(s) have agreed otherwise in writing.

Count I

Hall failed to inform her clients that she was terminating management services, as required by 20 CSR 2250-8.155(1)(A)(3). There is cause for discipline under § 339.100.2(15).

The MREC alleges Hall failed to maintain all escrow or trust accounts until all monies were transferred or properly disbursed as required by 20 CSR 2250-155(1)(A)5. But, although the facts we found in Count I relate to financial statements, Count I in the MREC's complaint does not reference Hall's failure to maintain the escrow account. Based on our Findings of Fact in Count I, Hall did not violate 20 CSR 2250-155(1)(A)5.

Count II

The MREC alleged Hall failed to keep intact in the escrow account funds held on behalf of clients. At the hearing, Hall testified she paid for other client expenses with the money in the

escrow account, but did not offer any proof of expenses incurred. Even with proof of expenses, the escrow account was overdrawn, when there should have been money held on behalf of clients. Hall failed to maintain client funds intact in the account, and this is cause for discipline under § 339.100.2(1).

By failing to maintain client funds intact in the account, Hall also violated § 339.105.1. There is cause for discipline under § 339.100.2(15).

Count III

Due to the fact that Hall's escrow account was overdrawn when she should have been holding rents, maintenance reserve, or other funds held on behalf of Bass, Hall failed to maintain all money belonging to others entrusted to her while acting as a real estate broker until the transaction involved was consummated or terminated, which is cause for discipline under § 339.100.2(1).

Hall testified she did not lie to Bass and returned all of the money to him, but his testimony is that he did not know about the advance payment when it was paid, and that Hall did not return all the money he was owed. Our Findings of Fact reflect our determination of credibility. Hall's false statements to Bass about the payment of rent in advance are cause for discipline under § 339.100.2(2). Hall's failure to remit the balance of Bass' funds upon termination of her services and demand by Bass is cause for discipline under § 339.100.2(3).

Hall's failure to notify Bass of the closure of her office and her management of the property violates the requirement of 20 CSR 2250-8.155(1)(A)3 that clients be notified of the closing of an office. There is cause for discipline under § 339.100.2(15).

Hall's acts in allowing the escrow account to decline to a negative balance while she should have been holding funds belonging to Bass violate the requirement of 20 CSR 2250-8.155(1)(A)5 that entrusted funds be maintained in an escrow account. There is cause for discipline under § 339.100.2(15).

The MREC alleges there is cause for discipline under § 339.100.2(19) in this count and in Count V. We will address that subdivision at the end of the decision.

Count IV

Due to the fact that Hall's escrow account was overdrawn when she should have been holding rents, maintenance reserve, or other funds held on behalf of Cohen and Kerrick, we find Hall failed to maintain all money belonging to others entrusted to her while acting as a real estate broker until the transaction involved was consummated or terminated, which is cause for discipline under § 339.100.2(1).

Hall's failure within a reasonable time to account for or to remit any money, valuable documents or other property coming into her possession, which belongs to others, is cause for discipline under § 339.100.2(3).

Hall's failure to account for, hold and disburse funds received on behalf of Cohen and Kerrick violates 20 CSR 2250-8.155(1)(A)5. There is cause for discipline under § 339.100.2(15).

Count V

Due to the fact that Hall's escrow account was overdrawn when she should have been holding rents, maintenance reserve, or other funds held on behalf of Llewellyn, Hall failed to maintain all money belonging to others entrusted to her while acting as a real estate broker until the transaction involved was consummated or terminated, which is cause for discipline under § 339.100.2(1).

Hall's failure to remit the balance of Llewellyn's funds upon termination of her services and demand by Llewellyn is cause for discipline under § 339.100.2(3).

Hall's acts in allowing the escrow account to decline to a negative balance while she should have been holding funds belonging to Llewellyn violate the requirement of 20 CSR 2250-

8.155(1)(A)3 that entrusted funds be maintained in an escrow account. There is cause for discipline under § 339.100.2(15).

Count VI

Due to the fact that Hall's escrow account was overdrawn when she should have been holding rents, maintenance reserve, or other funds held on behalf of Magallon, we conclude that Hall failed to maintain all money belonging to others entrusted to her while acting as a real estate broker until the transaction involved was consummated or terminated, which is cause for discipline under § 339.100.2(1).

Hall's failure to remit the balance of Magallon's funds upon termination of her services and demand by Magallon is cause for discipline under § 339.100.2(3).

Hall's acts in allowing the escrow account to decline to a negative balance while she should have been holding funds belonging to Magallon violate the requirement of 20 CSR 2250-8.155(1)(A)3 that entrusted funds be maintained in an escrow account. There is cause for discipline under § 339.100.2(15).

Subsection 339.100.2(19) – Other Conduct

The MREC argues Hall's failure to account to her client, abandonment of her duty to manage the property, and failure to properly handle her client's funds are conduct that constitutes untrustworthy, improper or fraudulent business dealings, demonstrate bad faith or incompetence, misconduct, or gross negligence, and thus are cause for discipline under § 339.100.2(19).

Section 339.100.2(19) authorizes discipline for "any other conduct which constitutes untrustworthy, improper or fraudulent business dealings or demonstrates bad faith or gross incompetence[.]" The adjective "other" means "not the same : DIFFERENT, any [other] man

would have done better[.]”¹⁰ Therefore, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute. We have found that the conduct at issue is cause for discipline under other subdivisions. There is no “other” conduct. Therefore, we find no cause for discipline under § 339.100.2(19).

Summary

There is cause to discipline Hall’s and MLH Realty’s licenses under § 339.100.2(1), (2), (3), and (15). There is no cause for discipline under § 339.100.2(19).

SO ORDERED on August 27, 2014.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner

¹⁰ WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986).